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## A Celebration Honoring James R. Browning, Chief Judge Emeritus, on the Fortieth Anniversary of His Appointment to the Ninth Circuit Court of Appeals

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## **THE JUDGE JAMES R. BROWNING DISTINGUISHED LECTURE IN LAW**

The Judge James R. Browning Distinguished Lecture in Law was established by the 2001-2002 editorial board and staff of the Montana Law Review, to honor Judge James R. Browning for his distinguished service to American jurisprudence, which includes more than forty years of leadership on the Ninth Circuit Court of Appeals, and a role as one of the founding members of the Montana Law Review.

The lecture series will create an annual forum for scholarly thought and discussion by attracting individuals who will provide the Montana Law Review, the School of Law, and the Montana legal community with timely, insightful and pertinent scholarship.



**A CELEBRATION HONORING  
JAMES R. BROWNING  
CHIEF JUDGE EMERITUS  
ON THE FORTIETH ANNIVERSARY OF HIS  
APPOINTMENT TO THE NINTH CIRCUIT COURT  
OF APPEALS  
FRIDAY, SEPTEMBER 21, 2001 4:00 P.M.  
COURTROOM ONE  
U.S. COURT OF APPEALS BUILDING  
95 SEVENTH STREET  
SAN FRANCISCO, CALIFORNIA  
  
THE HONORABLE MARY M. SCHROEDER  
CHIEF JUDGE, UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT PRESIDING**

CHIEF JUDGE SCHROEDER: It is an honor for me to preside over these proceedings to celebrate the judicial career of James R. Browning. I would like to begin the formal proceedings today by reading from a piece that I wrote for the Arizona State University Law Journal Symposium in Judge Browning's honor when he stepped down as Chief Judge of the Circuit.<sup>1</sup>

James Robert Browning's rising star first caught the eye of the United States Supreme Court in 1955. The Court appointed him to represent an indigent defendant who had violated the Mann Act by transporting two women across state lines in one trip. The issue was whether there were one or two offenses. [Judge (Harlan) later remarked,] Mr. Browning won a smashing victory. The Court was divided, but it decided the offense was the act of transportation, the number of ladies involved was not the point. The Court made Jim Browning its clerk in 1958.

The Browning star took a unique trajectory in 1961 when a wise Kennedy Administration appointed him a United States circuit Judge. No one before or since has made that particular career move. The Browning star shone with increasing and effervescent light during the 12 years he served as Chief Judge for the Ninth Circuit. Jim has proved himself as an advocate, a chief of staff and a jurist. Those who do not know him may wonder how one man could do so much. Perhaps he is a man who suffers from a multiple-personality disorder. But for those of us who know Jim Browning, there are no contradictions in his character. His personality is fully integrated, he is among the most resilient, the most cheerful and the most determined of mortals.

The consistency in his character can be discerned from a review of his career: As a lawyer, Jim fought for fair trials in the courtroom and fair competition in the marketplace; as Clerk of the United States Supreme Court, he organized the staff during a critical period; as Chief Judge of the Ninth Circuit, he performed the almost impossible job of leading a disparate, often balky and opinionated group of judges towards the 21<sup>st</sup> Century. His passion always, whether as an advocate, a staff technician or a leader of judges has been the same: To make the system work, and he succeeded. I don't know where we would be without him.

It is now my pleasure to introduce another former Chief Judge of our Circuit, Judge Proctor Hug, who has been a particularly good friend of Jim's and Marie Rose's.

JUDGE HUG: We are assembled here to honor a great man, a great leader and a great judge. During his forty years on the Ninth Circuit Court of Appeals, Judge Browning has made an enormous contribution, not only to our Circuit but to our system of justice.

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1. 21 ARIZ. ST. L. J. 3, 3-4.

This is an especially significant occasion when our country is responding with both sorrow and with anger to the terrorist attacks within our borders. While additional security from such terrorist attacks is clearly required, our constitutional civil liberties must also be protected. It is a delicate balance that must be struck, and our judiciary will play a vital role in doing so. The example of Judge Browning's judicial wisdom over the past forty years, and, indeed, in his continued service on our Court will be of great value in this important endeavor.

I remember when I was first appointed as a judge on the Ninth Circuit Court of Appeals some twenty-four years ago. I was very nervous about my first meeting with Chief Judge Browning. I had expected a stern, imposing and humorless man. Instead, I encountered this boyish-looking, bright-eyed, enthusiastic person. At first I thought I had stepped into the wrong office. I quickly learned that this was a man of great depth and legal ability - a man who loved the law, was extremely fair-minded and was a brilliant writer. I decided that Judge Browning was a perfect model of what a judge should be. He certainly was a model for me!

As Chief Judge, he was a marvel of administrative skill. I was always intrigued by the way that he succeeded in leading the many very independent-minded judges of this Court to adopt his ideas. A matter would be brought up at a Court meeting and would be met with objections and lack of enthusiasm. At the next meeting, that matter would appear again in a little different way and would be received with more enthusiasm. At the third meeting, it would be brought up with some further modifications, and lo and behold it would be adopted. We would all wonder, "How did he do that?" I soon came to realize that if Judge Browning wanted it done, it was going to happen. And it would always happen without rancor or hard feelings.

When I think about it, I have never seen Judge Browning irate or unpleasant. He has always maintained his cheerful optimistic approach to issues and to life. He has also had the great fortune of a wonderful wife, Marie Rose, who added class and style to our Court and our Circuit.

The tradition he established for friendship and collegiality in our Court of Appeals and throughout the Circuit has been a continuing tradition that has made judging a pleasure in the Ninth Circuit. "The key," he pointed out, "is to disagree without being disagreeable." I know that this has been a tradition that the succeeding Chief Judges, Judges Goodwin, Wallace,

Schroeder, and I have sought to maintain. I recall Judge Browning once saying to me, "If you receive an annoying memo and can think of a clever, sarcastic and deflating memo in response, don't." This is particularly good advice today in view of e-mail.

Judge Browning has always been a tireless advocate for the Ninth Circuit. This was never more evident than in our recent battles to prevent the Circuit from being divided. His ideas, strategies, steadfast optimism, and his presence in Washington, D.C. were truly essential to the success of our effort. I remember at the end of each wearing day of meetings in Washington, our little Ninth Circuit group would assemble for dinner and have a martini. Judge Browning with his irrepressible enthusiasm would always cheerily propose a toast, "To the Ninth Circuit."

On this occasion of Judge Browning's fortieth year on the Ninth Circuit Court of Appeals, I'd like to propose a toast (without the martini) to the Ninth Circuit, to the United States of America, and to Judge Browning, a remarkable judge, a remarkable leader, and a wonderful friend!

CHIEF JUDGE SCHROEDER: Thank you, Judge Hug. As you can tell from the applause, the entire courtroom concurs.

Our law clerks are part of our family. I think it is the dream of every judge to see a law clerk go on to become a judge in the law clerk's own right, and perhaps even to be able to sit with a law clerk on the same bench. I would now like to introduce the judge who made that particular dream come true for Jim Browning, Judge Marsha Berzon of our Circuit.

JUDGE BERZON: As Chief Judge Schroeder has just said, I am speaking today in a dual capacity, as one of Judge Browning's former clerks and as one of his newest colleagues. That I began my life in the law in Judge Browning's chambers and that I had the opportunity to come to know Marie Rose and him as well as I did, almost thirty years ago, was my great fortune. That Judge Browning is here to advise and inspire me as I began my life as a judge is an even greater fortune.

In addition to his emphasis on the broader picture and on the functioning of the appellate justice system as a whole, Judge Browning has also been the consummate appellate judge. As I saw as his law clerk and see anew as his colleague, he treats each case that comes before him with careful attention and produces succinct, clearly reasoned opinions.

I thought I would speak today on a few of Judge Browning's opinions, which are among those he regarded of some particular

significance for our entire system of justice. With no particular organizing principle in mind, I began my research by doing a fairly random search of cases concerning civil rights, civil liberties and constitutional rights -matters always of particular concern to Judge Browning. Interestingly and not surprisingly, a clear theme emerged as I began to sort through the cases, a theme that suggests that Judge Browning's forty years of work in the day-to-day tasks of judging and his work in developing the Court as a system for the fair dispensing of justice are closely allied. What I discovered was that, from his earliest days on the bench until now, Judge Browning's opinions have exhibited a particular concern with assuring access by citizens to the justice system, and, more broadly, to governmental entities.

Consider a few examples, most of which are not ground-breaking in themselves, but rather suggestive of this theme. One of Judge Browning's earliest authored opinions, *Brubaker v. Dixon*,<sup>2</sup> issued in 1962, appears to have been the first federal case to overturn a conviction for ineffectiveness of counsel. In *Brubaker*, Judge Browning, writing for the Court, held that a trial in which defendant's counsel ignored obvious defenses would not constitute the fair trial for an accused as contemplated by the Due Process Clause.

Sixteen years later in *Cooper v. Fitzharris*,<sup>3</sup> Judge Browning elaborated a standard for ineffectiveness of counsel that presaged the standard later adopted by the Supreme Court in *Strickland*. The concern driving both of these cases, it seems to me, was that criminal defendants, like other litigants, are entitled to have their arguments presented to and heard by the courts and that this guarantee would be meaningless absent reasonably competent (although, as *Cooper* cautioned, not necessarily perfect) legal assistance.

*Corsican Prod. v. Pitchess*<sup>4</sup> decided in 1964 was similarly something of a precursor to Supreme Court decisions issued a few years later. Writing for the Court, Judge Browning held that producers of a film could bring suit for an injunction and damages after exhibitors of the film were threatened with prosecution for showing "obscene" movies. Judge Browning emphasized that were the Court to decide otherwise, producers, unlike the exhibitors, might have no opportunity for a judicial

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2. 310 F.2d 30 (9th Cir. 1962).

3. 586 F.2d 1325 (9th Cir. 1978).

4. 338 F.2d 491 (9th Cir. 1964).



determination of their constitutional challenge to the labeling of their film as "obscene." Judge Browning rejected the contention that the case could not proceed because it, in effect, sought to interfere with a criminal prosecution. This same theme recurs as I will note in a moment.

Court access of a different kind was at issue in a 1982 case, *United States v. Brooklier*.<sup>5</sup> The issue there was the validity of several District Court orders barring the media and the public from certain parts of the proceedings in a criminal case. That question is one, of course, about the relationship between the public and the judicial system and concerns the need to provide for judicial accountability through open access to judicial processes. Working his way through a series of irresolute Supreme Court cases, Judge Browning stressed the need to allow the persons present in the courtroom to be heard before they are excluded, as well as the importance of articulated reasons for the closure of court proceedings so that appellate review can be meaningful.

Like the other cases, *Brooklier* can be viewed as epitomizing Judge Browning's central concern with creating an open and responsive system of justice. Judge Browning has consistently focused on the importance of assuring adversely affected people, particularly those with potential constitutional claims, access to a fair system for resolving their claims.

A 1983 case, *Johnson vs. Stuart*,<sup>6</sup> is yet another example of Judge Browning's abiding conviction that aggrieved citizens are often better heard in court than excluded pursuant to the various doctrines termed "Judicial Restraint." The challenge in *Johnson* was to a law requiring that no textbook for use in state schools may be selected that "speaks slightly of the founders of the republic or which belittles or undervalues their work." The state maintained that none of the potentially affected parties, the teachers, the students, or the parents, had standing to contest the statute, and that if any did, their dispute was not ripe for adjudication. Judge Browning's opinion agreed that the teachers could not proceed with the case because the statute had been authoritatively interpreted so as not to threaten them with discharge or discipline. With respect to the students and parents, the opinion held that did not need to satisfy a "but for" test in establishing that invalidation of the statute would result

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5. 685 F.2d 1162 (9th Cir. 1982).

6. 702 F.2d 193 (9th Cir. 1983).

in different textbooks in the classrooms. Instead, they needed only to prove that it was substantially likely that the injunctive relief they sought would have that result. Again, Judge Browning rejected standards for access to judicial dispute resolution that ignore practical realities.

A final and somewhat more recent example of Judge Browning's concern for assuring fair access to the justice system is *Sable Communications vs. Pac. Tel.*,<sup>7</sup> decided in 1989. In that case involving a First Amendment challenge to a Public Utility Commission rule requiring that phone service be disconnected on probable cause that it was being used for illegal activity, Judge Browning rejected a bevy of arguments as to why the Court should not hear the case. His opinion held that Sable could challenge the regulation even though it had not been enforced against it, noting that a well-founded fear of enforcement of a compulsory regulation was sufficient. Again, Judge Browning focused on the practicalities facing the plaintiff. "While it was true," he noted, "that no state agency had responded to Pac Bell's specific request, state agencies had responded to such requests in the past, so the plaintiff had a legitimate reason to fear such a response and to seek to avoid it before its phone service was cut off." The opinion also rejected the argument that the Court should abstain from hearing the case, stressing once more the First Amendment context and the need for Federal Court protection to avoid chilling free speech rights.

A final example from Judge Browning's jurisprudence, while not involving court access, strikes me as drawing on impulses similar to those involved in the court access cases I have mentioned. In the 1985 Socialist Workers Party's case, later reversed by the Supreme Court (although I should say, possibly vindicated later in a case last term outlawing open primaries in general), Judge Browning wrote an opinion invalidating a provision of Washington law severely restricting ballot access for minor parties in general elections. This time the concern was with access to the "opportunity to organize, campaign, and vote outside the framework of the dominant political party," but the impetus was similar to the court access cases. Once more, Judge Browning's opinion reflects the view that minority interests should be able to bring their concerns forward for resolution, this time through the political process, rather than through the

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7. 890 F.2d 184 (9th Cir. 1989).

courts.

One further reflection: Not only is Judge Browning's work as a judge consistent with his life's work of improving the administration of justice in a systemic way, it is also consistent with his fundamental character. Judge Browning is the gentlest and kindest of men, never abrupt, and never convinced that he knows the answer before he hears out the others concerned. Listening before coming to conclusions is a virtue that is endemic to him, and, as his forty years work as a judge and judicial administrator show, is a value that he believes should be central to the judicial system as well. Those of us who have had the good fortune to work with him, whether as clerks or as colleagues, have learned that Judge Browning imparts his wisdom quietly and kindly with confidence and conviction, but only after absorbing and accounting for opposing views. We in the Ninth Circuit and the judiciary nationally have been uniquely fortunate to have had forty years of Judge Browning's self-effacing wisdom.

CHIEF JUDGE SCHROEDER: Thank you, Judge Berzon. You've given us some lessons from Judge Browning's life that we should all take to heart.

In the Ninth Circuit we are blessed with many lawyers who have helped us. Jim Browning has nurtured our relationships with the Bar, and we treasure those relationships. With us today and epitomizing the same spirit of public service that Jim showed in his professional career, is a good friend of all of ours, Michael Traynor, a busy practicing lawyer, who is also President of the American Law Institute, and a good friend of the Court.

**MR. MICHAEL TRAYNOR:**

In Belt, Montana, when young James Browning graduated from high school as the valedictorian of his class, he showed the promise of a brilliant career. That career manifested itself in a life of superb public, professional, and judicial service: Editor-in-chief of the *Montana Law Review*; Army intelligence in World War II in the Pacific Theatre where he earned the Bronze Star; ever-ascending leadership in the Department of Justice and in private practice, with emphasis on antitrust law; Clerk of the Supreme Court of the United States, and then, in 1961, appointment as a judge of the United States Court of Appeals for the Ninth Circuit and Chief Judge from 1976 to 1988. His many accomplishments, including particularly those as Chief Judge, earned him the prized Devitt Distinguished Service to

Justice Award. That award describes his innovative leadership in achieving speedy, effective justice; his reaching out to other circuits and other nations; and his contribution to collegiality during the Browning Years, with special and fitting mention of the individual contributions of Marie Rose Browning.

My role today is not to analyze Judge Browning's contributions to judicial administration or to judicial precedents, but to talk more personally about his leadership and his attendant stature in our great profession.

I have drawn primarily on four sources, my own recollections of our work together in opposing misguided attempts to split the Ninth Circuit; data from the Administrative Office of the Courts; one case reflecting the professionalism expected of lawyers; and the heartfelt letters supporting the naming of this courthouse in honor of Judge Browning. Only one of these sources is imaginary, to avoid undue solemnity.

My own involvement with Judge Browning in opposing efforts to split the Ninth Circuit goes back to 1990 when he, then Chief Judge Goodwin, and other judges and lawyers testified before the Senate Subcommittee on Courts and Administrative Practice, chaired by Senator Heflin. Judge Browning testified in essence that "we can continue to grow and perform effectively."

After he and the remaining judges testified, I recall vividly the break that then occurred between their testimony and the panel of lawyers that was poised to testify: During the break, all the TV media removed their cameras, thereby demonstrating their approval of the terseness and force of judicial testimony as well as their lack of interest in what the lawyers had envisioned would be our dramatic moment. The print media remained, however, demonstrating their commitment and evenhandedness, or perhaps their ennui.

My next major collaboration with Judge Browning was in opposing the recent campaign in Congress to split the 9th Circuit and in addressing the Commission that evolved from those battles. The bipartisan ad hoc committee that we helped organize with my partner Joe Russoniello worked closely with Judge Browning and then Chief Judge Hug. Our meetings were characterized by collegiality and a sense of pulling together, a focus on key issues, and no wasting of time, all with a spirit of unity animated by Judges Browning and Hug. Our assignments including getting the entire California Congressional delegation united against the split as well as individual assignments to

reach every member of the Conference Committee. Judges Hug and Brown were tireless, and their efforts went beyond letters, email, and telephone calls, extending to personal visits to Senators and Members of Congress in Washington. Judge Browning was my principal contact person. He would call periodically, hear my current report, suggest further approaches, and usually give us a fresh assignment, all in the most friendly and direct way. If there is ever a Friendly Coaxer Award given in this Circuit, Judge Browning should win it hands down. I experienced first-hand Judge Browning's engaging and positive spirit, one that makes others want to help. I can readily understand how important that spirit has been in the life of this Circuit.

My second source for today's talk is the AOC, not the dry statistical data but the new stuff. With the help of a sophisticated computer hacker, I was able to probe the AOC's budding data base called "Web Profiles of the Federal Judiciary." It seems that the AOC was going to make these profiles of internal communications and visits by federal judges available for a \$100 fee per judge to those members of the public who have undying curiosity about such matters. Fortunately for the noble cause of privacy, but unfortunately for the ignoble cause of snooping, the project was aborted by the time it reached the judges whose last names begin with "J", and it never reached the "K's." Although my unnamed coconspirator and I could have obtained Judge Browning's complete profile before the A-J base itself was destroyed, we elected to get just the \$5 special entitled "Judge Browning's Greatest Hits." Although I won't recite them in detail, here is a thumbnail sketch:

First, is a form letter that begins "Dear Senator: About your \_\_\_\_ bill to split the Ninth Circuit." The form letter then provides a hyperlink at the blank to a menu of varied choices.

Second, is an earnest essay to Ninth Circuit Colleagues entitled "On judicial modesty, immodesty, and per curium opinions."

Third, is a confidential memo to Chief Judge Schroeder, entitled "How to Minimize En Banc Hearings and Survive Supreme Court Review."

Fourth, is a speech entitled "It's a Long Way to Heaven" and subtitled, "But It Would Be a Lot Shorter For My Colleagues if They Accepted All My Good Ideas."

Fifth, and last is a mystery to me: It is a draft op-ed piece by Judge Kozinsky. Perhaps, in keeping with his modesty, Judge

Browning was being enlisted as an unsigned collaborator, or perhaps this is just a mistake and the AOC's way of saying "we're not perfect either." I leave the mystery to be unraveled by insiders.

As a representative of our profession at this ceremony honoring my colleague in the American Law Institute, I selected as my third source the much-cited *en banc* case on lawyer responsibility: In *Cooper v. Fitzharris*,<sup>8</sup> in an opinion authored by Judge Browning, this court held, first, that the Sixth Amendment requires that persons accused of crime be afforded reasonably competent and effective representation and, second, that where a claim of ineffective assistance is founded upon specific acts and omissions of defense counsel at trial, the accused must establish that counsel's errors prejudiced the defense. Although there was unanimity on the first point, it bears noting that Judges Hufstедler, Ely, and Hug dissented on the second point regarding the requisite showing of prejudice. To this reader, the opinions reflect the court's careful effort to articulate a fundamental standard of lawyering as well as its considered difference about the constraints involved in applying that standard. Although I can only conjecture, I expect that Judge Browning's sense of collegiality and his extraordinary ability to listen to others enabled the court to articulate clearly both its unanimous agreement and its key point of difference.

The file of letters supporting the naming of this courthouse for Judge Browning is my last source. Although I will not quote extensively or by name, here are some key themes. He is a "tremendous advocate for maintaining the unity of the Ninth Circuit" and "promoting collegiality on the bench;"—"Judge Browning's numerous achievements caused many Montana students to raise their self-expectations;"—he was "animated by a vision of the large judicial circuit and how it could serve the needs of a growing population and an expanding demand for appellate review;"—he "never lost sight of the human element;"—he showed "stalwart leadership" and willingness to consider details in dealing with the "tempests in Congress;"—he is a superb leader and "No matter how difficult the issue or how strongly held the divergent viewpoints, Judge Browning has managed to channel the participants into having a constructive, even cordial discussion;"—"he really listens;"—his efforts are "tireless" and he has given his "personal energy, warmth, and

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8. 586 F.2d 1325 (9th Cir. 1978), *cert. denied*, 440 U.S. 974 (1979).

strength over the years;”—he “quietly modernized our court administration, encouraged a collegiality that has served us well and most important sought justice for the least among our litigants—immigrants, minorities, the poor.” In my letter to Senator Boxer, I described Judge Browning as “an inspiring example of integrity and public service” and said that “A great and sturdy courthouse needs the name of a great and sturdy judge.”

At a time when our nation’s freedom and security are threatened, it is essential that we remain steadfast in our fundamental commitment to advance the rule of law. Judges who bring to their responsibilities integrity, courage, compassion, intelligence, and a collegial sense of pulling together are likewise essential. For forty years, we have had such an extraordinary judge in James R. Browning.

**CHIEF JUDGE SCHROEDER:**

Judge Browning’s network of support for the Court during his years of leadership ranged far and wide. It was very important to him at all times that any battles that the Court was involved in had to be supported by research, scholarship, and documentation. Accordingly, he enlisted not only members of the Bar but members of the academic community to assist the Court. Representing much of that work and assistance in the great causes that Jim battled for is Professor of Law Arthur D. Hellman, Distinguished Faculty Scholar, of the University of Pittsburgh School of Law who is here with us today.

**PROFESSOR HELLMAN:**

Judges of the Ninth Circuit, friends of Judge Browning, it’s a great privilege to be here today as we gather to celebrate forty years of service by Judge Browning to the federal judiciary.

When I was asked to take part in this program, I was absolutely thrilled, but my assignment was a daunting one: to convey in a few minutes what Judge Browning has accomplished and what he has meant to this Court. I’ve decided that the only way I can even hope to do any of this is to concentrate on a single theme and a single period in the Court’s recent history. The theme is leadership, and the period is the three years from 1977 to 1980, the period that in retrospect can be seen as the crucible of the modern Ninth Circuit. I’m going to draw not only on my own chapters in the book “Restructuring Justice,” but on the excellent historical chapter by Professor John Schmidhauser.

In 1977, less than a year after Judge Browning took over as

Chief Judge, he faced a challenge in Washington, D.C. The Ninth Circuit, then a court of 13, badly needed new judges. With the Presidency and the Congress controlled by the same party for the first time in nearly a decade, a judgeship bill was a real possibility. But there was a complication. Many members of Congress, including some powerful senators, believed that the Ninth Circuit should be divided. Their position was that new judgeships and the Circuit split should be part of the same bill. Some of the Ninth Circuit's judges agreed, but others strongly opposed the split.

Judge Browning quickly realized that if the Court was to have any hope of getting the judges it so badly needed, the judgeship requests would have to be separated from issues of Circuit division. Further, Judge Browning would have to put aside his own views about restructuring. At that time, implausible though it seems today, Judge Browning himself was sympathetic to the idea of dividing the Circuit. But that was now to be subordinated to a more important goal.

To that end, Judge Browning launched a campaign, similar to the ones you've heard about in later years, that brought in judges and lawyers from all nine states of the Circuit. In meetings, in letters, in phone calls, these diverse individuals conveyed a single message to the members of Congress: "Give us the judges we need. Do not split the Circuit now. Don't worry about that issue."

The high point of this campaign was a letter signed by all 18 senators from the nine states of the Ninth Circuit. Eighteen senators from both political parties, and, remarkably, including some who had taken public positions in support of dividing the Circuit, now joined in saying, "Create new judgeships for the Court of Appeals. Do not pursue the restructuring of the Circuit."

After that letter, the passage of the judgeship bill was almost an anticlimax. The Court of Appeals did get its judges and the Ninth Circuit was not split. But with the enactment of the bill came a new challenge. The Court did not just get new judges; it received Congress' invitation to innovate. Section 6 of the law authorized any Court of Appeals with more than 15 active judges to perform its en banc functions by less than all of them -in other words, to create what we know today as a limited en banc court.

There was never any doubt that the Ninth Circuit would take up the option offered in Section 6, but how was that to be



done? The Hruska Commission had wrestled with that question, and I can tell you from my own experience there, that we never did find a satisfactory answer. Well, for Judge Browning and for the Ninth Circuit, this was a different kind of challenge that called for a different kind of leadership. Here, Judge Browning's goal was not to reach a particular outcome; rather, the concern was with process. The whole idea of a limited en banc court was untested and highly controversial. It was essential, first, that the judges have ample opportunity to consider the merits and drawbacks of the various possible approaches. It was even more important to avoid confrontation and to enable the members of the Court to withdraw ideas and modify their views without having to give up positions that they had formally committed themselves to.

So here, in striking contrast to his proactive, very visible approach to the judgeship bill, Judge Browning stayed in the background and let the process run its course. And that's what happened. For several months the judges exchanged memos; ideas flew back and forth; proposals were modified, withdrawn and improved. The judges then came together in a four-hour meeting at their symposium or retreat and worked their way through all of those issues.

In my book, drawing on interviews and documents, I described that meeting as "exhilarating," and that's the way it really seemed to me. One reviewer of the book, however, took me to task for that characterization. He said that no meeting of judges could possibly fit that description. Well, you'll not be surprised to hear that the reviewer was from one of the Eastern Circuits, and I can well believe that meetings of judges there, perhaps, are not exhilarating. But this was the Ninth Circuit under Chief Judge Browning's leadership, and from all of the evidence, that is what happened. The rule was adopted, the limited en banc court was born, and once again Judge Browning had brought a united court through what could have been a divisive undertaking.

Yet even as the Court was poised to enter the new era, a controversy arose that could have set the whole enterprise at naught. Shortly before the new judges took their seats, the old court handed down an en banc decision that generated an intense emotional response within the Court. It was a drug prosecution. Police had bribed a five-year-old boy to learn where his parents had hidden the drugs. A bob-tailed en banc court, by a vote of five to four, had found no constitutional violation. Some

of the new judges now called for a vote on rehearing en banc by the new enlarged court.

Well, I think from all that you've heard here today, you know where Judge Browning's heart would have been in that. But, as always, the institution came first. As the voting approached, Judge Browning sent a remarkable letter to his colleagues. If I had to pick a single document that captures what Judge Browning has meant to the Ninth Circuit and to the nation's judicial system, I think this letter would be it. And with Judge Browning's permission, I'm going to share some of it with you today. Here's what he wrote:

Because I believe circumstances require it, I now depart from the position of neutrality that would ordinarily be the appropriate one for me to maintain. In my opinion, this appeal should be brought to a close.

We are faced with a challenge never before faced by a United States Court of Appeals. We must create an effective collegial body of 23 diverse, independent and strong-minded people. We must do this while disposing of the largest backlog any Court of Appeals has ever faced, and with filings still increasing. If our rule for a limited en banc is to work, we must be willing to accept decisions with which we do not agree, made by less than a majority of the Court. This case tests whether we can do so. If we cannot, I believe division of the Circuit is inevitable.

"I do not question for one minute," Judge Browning wrote, "[the requesting judge's] absolute right to call for the vote, but I believe the welfare of the Court will be better served if we now put this appeal to rest." So ended the letter.

Judge Browning's view carried the day, and as most of you here know, in the 21 years that followed, there still has not been a rehearing by the full Court. Without the precedent set by that first vote, I don't think that would have happened. One of the arguments against division of the Circuit would have fallen away, and we might well have a divided Circuit.

Now, you've noticed, I'm sure, that each of these examples - and of course there are lots of others I could have cited - reflects a different style of leadership appropriate for the different nature of the challenge. But there are some common threads, some already cited, and there are three that I'd like to call particularly to your attention. First, we see a willingness on Judge Browning's part to subordinate his own policy views to the larger interests of the institution. Second, we see a respect for others that is the hallmark not only of the finest kind of leadership, but also of the professionalism that everyone in this room aspires to. Finally, we see a vision of the future that is

larger even than the largest of the Federal Judicial Circuits.

I would love to say more about each of these points, instead I will conclude with these thoughts: The Federal Courts of the West were particularly fortunate to have Judge Browning at their helm at that critical moment in their history when the modern Ninth Circuit was born. But the insights that provide the foundation for all that Judge Browning did can provide guidance, and, yes, inspiration for all courts in the decades to come.

CHIEF JUDGE SCHROEDER: Thank you, Professor Hellman, for a most insightful presentation. I think those of us here who lived through those years with Judge Browning would agree that they were indeed exhilarating.

Not all of Judge Browning's law clerks became judges, many became very distinguished lawyers. We are very privileged to have with us today two eminently distinguished lawyers who served as law clerks to Judge Browning, and who, indeed, helped, along with Judge Berzon, to organize the reunion of law clerks that's taking place this weekend. I will call first on Peter Wald.

MR. PETER WALD:

No tribute to Judge Browning would be complete without discussion of his seminal contribution to our national antitrust jurisprudence, a field of law about which the Judge has always been and remains so passionate. It is, of course, beyond my poor powers to synthesize any comprehensive and coherent summary of the Judge's antitrust jurisprudence or its impact on our intellectual discourse. The honor does fall to me, however, to share some brief observations about the Judge's extraordinary work in this area, and to pay tribute to some of the most significant opinions that he has authored along the way.

Over the last forty years, Judge Browning has issued many thoughtful and enduring antitrust decisions. These include such well-known examples as his 1964 opinion in *Lessig v. Tidewater Oil*,<sup>9</sup> and his 1977 opinion in *Greyhound Computer v. IBM*,<sup>10</sup> both involving claims of attempted monopolization; his 1984 opinion in *Digidyne v. Data Gen.*,<sup>11</sup> exploring the critical intersection and boundaries between the possession of intellectual property and market power; his 1984 decision

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9. 327 F.2d 459 (9th Cir. 1964).

10. 559 F.2d 488 (9th Cir. 1977).

11. 734 F.2d 1336 (9th Cir. 1984).

opinion in *Ostroff v. H.S. Crocker*,<sup>12</sup> involving the question of antitrust standing; his 1984 opinion in *Lake Communications v. ICC Corp.*,<sup>13</sup> concerning the severability of antitrust claims; and of course, Judge Browning's now famous dissent from this Court's 1975 decision in *GTE Sylvania vs. Continental TV*,<sup>14</sup> in which the Supreme Court held that the rule of reason applicable to vertical nonprice restraints.

The modernist view of antitrust law has perhaps best been captured in the phrase from the Supreme Court's 1977 opinion in *Brunswick* that the antitrust laws were enacted for the protection of competition and not competitors. It is, however, important to appreciate that our current focus on consumer welfare and on the role of the courts in distinguishing conduct that reflects robust competition from conduct that is predatory is the product of a long debate over the import and purpose of the antitrust laws. Over the last forty years, Judge Browning's voice in that debate has been strong, clear and steadfast. As he undoubtedly would acknowledge, Judge Browning consistently has been concerned with the predicament of small businesses as they seek to compete and secure marketshare in the face of our modern tolerance for bigness. As we review certain high-water marks in the history of Judge Browning's antitrust jurisprudence, we can discern how his views have continued to find currency, even as the focus on modern antitrust law has shifted from the dismantling of trusts to the fashioning of rules that promote allocative efficiency, and, hence, consumer welfare.

Today, I would like to focus on three of Judge Browning's opinions, which have reflected and helped to animate that national debate: *Lesig*; *GTE Sylvania*; and *Digidyne*. To put these cases in some historical context, it is important to recognize that during the period from the 1930s to the 1970s, the proper relationship between the economic and social purposes served by the antitrust laws was the focal point of lively dialogue. In that context, the notion of preserving competition was often deemed synonymous with protecting the ability of smaller firms to compete. Both the 1936 Robinson-Patman Act and the 1950 amendments to Section 7 of the Clayton Act were driven by an express desire to protect smaller firms from large dominant competitors.

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12. 740 F.2d 739 (9th Cir. 1984).

13. 738 F.2d 1473 (9th Cir. 1984).

14. 537 F.2d 980 (9th Cir. 1976).

During this period, the judiciary, in such thoughtful opinions as Judge Hand's 1945 Opinion in *United States v. Alcoa*,<sup>15</sup> and the Supreme Court's 1967 Opinion in *United States v. Arnold, Schwinn and Co.*,<sup>16</sup> emphasized that the Sherman Act was grounded not only in consideration of economics, but in the social preference for preserving our historical system of small independent producers.

It was during this period that Judge Browning began his career in antitrust law. As any of you who picked up today's Daily Journal will have noted, Judge Browning describes himself as having been raised in the days of trust-busting, and he certainly has the credentials to prove it. He started off as a staff attorney for the Department of Justice's Antitrust Division in 1941 and went on to practice antitrust law in government and in private practice for many years, serving as Chief of the Division's Northwest Regional Office and Assistant Chief of the Division's General Litigation Section.

Judge Browning was appointed to the Ninth Circuit in 1961, and, in 1964, authored this Court's opinion in *Lesig*. *Lesig* involved claims by a service station operator who was a dealer of Tidewater Oil products. When Tidewater canceled the service station lease and the dealer contract, Lesig sued on both contract and antitrust theories.

The heart of the case, jurisprudentially, was the Court's treatment of Lesig's attempted monopolization claim. Judge Browning rejected the traditional notion that a claim of attempted monopolization required the plaintiff to prove, first, that the defendant had the specific intent to monopolize a relevant market; and second, that there was a dangerous probability that he or she could do so. Instead, Judge Browning found that where there was evidence of anticompetitive conduct, it was enough for the plaintiff to show that the defendant had the specific intent to monopolize any part of interstate commerce.

Later, Judge Browning had the opportunity to explain this viewpoint in his 1977 *Greyhound* decision. There he observed, "If proof of an economic market, technically defined, and proof of a dangerous probability of monopolization of such a market were made essential elements of an attempt to monopolize, as a practical matter the attempt defense would cease to have

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15. 148 F.2d 416 (2d Cir. 1945).

16. 388 U.S. 365 (1967).

independent significance. A single firm that did not control something close to 50 percent of the entire market would be free to indulge in any activity however unreasonable, predatory, destructive of competition and without legitimate business justification. Any concern not dangerously close to monopoly power could deliberately destroy its competitors with impunity."

*Lesig* and its progeny have received significant attention over the years, culminating in the Supreme Court's 1993 decision in *Spectrum Sports*. On *certiorari* from the Ninth Circuit, *Spectrum Sports* rejected *Lesig's* treatment of attempted monopolization and reverted to a traditional statement of the law requiring proof of both a relevant market and a dangerous probability of success. But *Spectrum Sport's* treatment of *Lesig* demonstrates just how dramatically the Court's views of the antitrust laws changed from the 1960's to the 1990's, during the period of Judge Browning's active tenure on this Court. As the Court explained in 1993:

The purpose of the Sherman Act is not to protect business from the working of the market, it is to protect the public from the failure of the market. The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself. It does so not out of solicitude for private concerns, but out of concern for the public interest. It is sometimes difficult to distinguish robust competition from conduct with long-term anticompetitive effects. For these reasons, Section 2 makes the conduct of a single firm unlawful only when it actually monopolizes or dangerously threatens to do so.

What we see in *Spectrum Sports* then is a fundamental reworking of *Lesig's* premises. *Spectrum Sports* emphasizes the seminal importance of a market-power analysis in distinguishing between robust competition on the one hand, and predatory conduct on the other.

The fundamental shift in antitrust jurisprudence and philosophy, which occurred during the forty years of Judge Browning's active tenure on this Court, is perhaps most dramatically reflected in the Supreme Court's 1977 opinion in *GTE Sylvania*. This opinion is regarded by many as the cornerstone of the modernist view of antitrust law.

Before turning to the Supreme Court's landmark opinion, however, it is important to remember the crucial role played by the Ninth Circuit and by Judge Browning in the development of this case law. In 1975 this Court declined to apply the rule of *per se* legality to vertical nonprice restraints, which had been fashioned by the Supreme Court in its 1967 decision, *Schwinn*.

Instead of following *Schwinn* and holding the vertical restraint at issue to be a legal *per se*, the Ninth Circuit analyzed the legality of the locations clause in Sylvania's franchise agreements under the rule of reason. The Court emphasized that Sylvania's gain in marketshare, after years of struggling with decreasing sales, was a pro-competitive interbrand effect of the locations clause. The Court insisted that the legality of vertical territorial restraints should turn on whether the restraints were reasonable.

Judge Browning issued a memorable dissent in *GTE Sylvania*, he vigorously defended the *per se* rule of *Schwinn* by focusing on the goals of the Sherman Act. While acknowledging that consumer welfare was one goal of that act, Judge Browning insisted that Congress' general purpose in passing the Sherman Act was to limit and restrain accumulated economic power represented by the trusts and to restore and preserve a system of free competitive enterprise. The Congressional debates reflect a concern, not only with the consumer interest in price, quality and quantity, but also with society's interest in the protection of the independent businessman for reasons of social and political as well as economic policy.

Judge Browning further supported his view by recalling Judge Hand's suggestion in *Alcoa* that:

Congress was motivated by more than economic policy when it passed the Sherman Act. It is possible because of its indirect social or moral effect, to prefer a system of small producers each dependent for his success upon his own skill and character to one in which the great mass of those engaged must accept the directions of a few.

By affirming the Ninth Circuit's approach in *GTE Sylvania*, the U.S. Supreme Court ushered in the modern era of antitrust law. The decision marked a true transformation in antitrust analysis by emphasizing the seminal importance of consumer welfare in (siding) with the interests of large manufacturers over those of smaller dealers and distributors, where necessary, to increase allocative efficiency and produce enhanced consumer benefits. But in its opinion written by Justice Powell, the United States Supreme Court felt constrained to acknowledge Judge Browning's reminder that competitive economies confer social and political, as well as economic advantages.

Finally, it is important to note that in *Digidyne* Judge Browning implicitly defended the concerns of the small independent business dealer, as he had done years earlier in *GTE Sylvania*. Congress itself entered the debate in 1988 when

it amended the Patent Act, 35 USC 271, to eliminate the presumption of market power in the context of a patent misuse defense. But the final bill did not eliminate the presumption of market power based on copyright, reflected in Judge Browning's *Digidyne* Opinion. *Digidyne* remains a powerful indicator of Judge Browning's abiding influence on the rules that govern the market behavior of firms possessing intellectual property.

Judge Browning has also played a significant role in the development of antitrust jurisprudence concerning tying arrangements and the development of the technology industry. This is perhaps best illustrated by his 1984 opinion in *Digidyne*. *Digidyne* involved the bundling of a license for copyrighted operating-system software with the purchase of a central processing unit. The issue presented to the Ninth Circuit was whether the defendant had sufficient economic power with respect to its operating system to effectively restrain competition in the market for CPUs.

Judge Browning reasoned that the copyright "created a presumption of economic power sufficient to render the tying arrangement illegal *per se*." In other words, detailed proof of a dominant position within the relevant market was not deemed necessary. Rather, the copyright gave rise to a presumption that the defendant enjoyed sufficient leverage to impose a tying arrangement on purchases like *Digidyne*, thus supplying the requisite market power necessary to establish an antitrust violation. Judge Browning's consistent concern for the vitality and viability of smaller competitors cannot be gainsaid, lest we lose sight of the antitrust law's twin purpose, to guard against predatory conduct that has no redeeming competitive virtue.

In short, there simply can be no question that Judge Browning has made a remarkable and abiding contribution to this country's antitrust jurisprudence, lending a clear and consistent voice to the national debate over the proper purposes and the proper interpretation of the antitrust laws.

Judge Browning, our understanding and practice of antitrust law today owes so much to your deeply thoughtful and enduring insights. We thank you for your extraordinary body of work in this area, even as we look forward to your continuing contributions.

CHIEF JUDGE SCHROEDER: Thank you, Peter, for showing us that Judge Browning's concern for the little guy extends even to his contributions to antitrust jurisprudence. We will now hear from Michael Rubin.



MR. MICHAEL RUBIN:

I appear here today primarily as a representative of the 115 men and women who have had the great pleasure to spend a year of our lives, and in some instances, two years of our lives clerking for Judge Browning.

We have heard this afternoon some extraordinarily tributes to an extraordinary man. Now, the Judge is not one who celebrates anniversaries or any milestones with great fanfare. In fact, most of the clerks had no idea that this anniversary was coming up until someone – whose name I'm not allowed to reveal – told us last winter that, in fact, it would be the fortieth anniversary of his appointment to the Ninth Circuit. We tried to think of what would be an appropriate tribute for a judge who meant so much to all of us, to the cause of justice in America, and to the causes that you've heard so eloquently described today. The idea that we eventually came up with is to see if we could have this magnificent building, which since 1905 has been the headquarters of the Ninth Circuit, formally named the James R. Browning United States Courthouse.

Everyone who has spoken today has emphasized the extraordinary contributions that the Judge has made to the Ninth Circuit. It seemed fitting to us that this building be named after the Judge to reflect everything that he has done in developing not only the jurisprudence of the Ninth Circuit but also the Circuit's administration and the sense of collegiality among its judges.

Last spring as we started asking around, we found that the process of naming the building was not nearly as difficult as we thought it might be. Everyone we spoke to, including the leadership of the State Bar of California, the San Francisco Bar, the Los Angeles Bar, prominent practitioners, and law school deans and professors, supported the idea and assisted us by writing letters, calling members of Congress, and using their personal contacts to make this dream happen.

I am very pleased to announce that on May 18<sup>th</sup> of this past year, Senator Barbara Boxer introduced a bill to name this building the James R. Browning United States Courthouse. Representative Nancy Pelosi has sponsored parallel legislation in the House of Representatives. We have two cosponsors in the Senate: Senators Harry Reed and Max Baucus. In the House we have several cosponsors: Lynne Woolsey, Zoe Lofgren, Howard Berman, Shelley Berkeley, and Christopher Cox.

Several of the senators and representatives, who are

supporting this legislation and working hard to get it passed, tried to get here today, but, obviously, given the events of this past week, are unable to do. We are very fortunate, however, that Sam Chapman, who is the Chief of Staff to Senator Boxer, has flown from Washington to be with us today. I would like right now to turn over the podium to Sam to have him say a few words on behalf of Senator Boxer.

**MR. SAM CHAPMAN:**

Senator Boxer, as Michael said, could not be here today. She is in Washington dealing with the affairs of our country, but she sends her greetings to all of those who are gathered here and she asked me to read this statement from her:

One of the most important responsibilities entrusted to me as a member of the United States Senate is to recommend candidates for Federal judgeships and to review those nominated by the President. I take this responsibility very seriously, and my staff and I have devoted countless hours to efforts to find the best people. If there were more James R. Brownings the process would be much easier.

Judge Browning stands as a model for future would-be Federal judges. After establishing an outstanding record at his home state's law school, he served his country in a variety of positions, distinguishing himself in each one with his energy, his intellect, his creativity and his sound judgement. Since his appointment to the Court in 1961, he has been widely recognized as an outstanding jurist not only in the courtroom, but as an innovator in Court planning and administration. As Chief Judge he implemented numerous improvements in Court procedures, and he was a tireless advocate for the Ninth Circuit, which he remains to this day. I know that he played an important role in the restoration and the retrofitting of the building we are sitting in today.

Judge Browning has served longer as a judge on the Ninth Circuit than any other judge in the Circuit's history. That is a remarkable accomplishment, but it is the exceptional quality of that service and the respect he has earned from his colleagues and all those who have had contact with him, which truly mark him as an exceptional judge and an exceptional person.

I know Judge Browning has a ready smile and a warmth and concern for others that are reflected in everything he does. He has developed close personal relationships with countless Court personnel and many others. I am particularly aware of many of these qualities, because of the tributes to him that I have received from his colleagues, his legion of former law clerks, members of the Federal Bar and many friends. That is why I was proud to introduce the legislation in the United States Senate to name this building after Judge Browning. You may be certain that I will do everything I can to ensure that it becomes law.

MR. RUBIN: Thank you, Sam.

We also received a letter in from Senator Dianne Feinstein that she asked that I read.

Dear Judge Browning,

I wanted to add my voice to the chorus of friends, family and colleagues who have gathered here today to celebrate your forty years of dedicated service to the United States Court of Appeals for the Ninth Circuit. Your successful leadership and profound commitment to our judicial system is truly commendable. For over forty years you have sought to promote the highest standards of jurisprudence, and you have touched the lives of countless individuals.

I also wanted to take this opportunity to thank you for your hard work as Chief Judge to reorganize and modernize the Ninth Circuit. You have created a successful model that many other Federal Judicial Circuits quickly adopted. You have given tirelessly of your time, energy and talents for the betterment of the Court, the State of California and the nation. You are a wonderful example of the difference one committed individual can make, and I wanted to offer my sincere thanks for your lifetime of hard work.

MR. RUBIN: I have also been asked to read a letter from Representative Nancy Pelosi:

Dear Friends,

I would like to join the Chief Judge and members of the Ninth Circuit in honoring Judge Browning for forty years of outstanding service to the United States Court of Appeals for the Ninth Circuit. His long and noteworthy career of public service as a judge in the Ninth Circuit, Clerk to the U.S. Supreme Court, and the Department of Justice, demonstrates his commitment to serving our country.

I am honored to be a principal cosponsor of HR 2804, a bill to name this majestic and historical building the James R. Browning United States Courthouse. Given Judge Browning's long years of devotion to the Ninth Circuit Court and the countless hours he spent laboring to protect the interests of justice in America, it is only fitting that the building be formally named after the Judge. Currently the bill is in Committee, and it is my hope that passage of HR 2804 in the House of Representatives will be rapid.

MR. RUBIN: And finally, just this morning, I received this special letter. The U.S. senators in Montana when the judge was appointed were Lee Metcalf and Mike Mansfield, and I received from Washington, D.C., this morning the following letter from Mike Mansfield:

It is an honor to be asked to participate in honoring Judge James Browning's decades of service to our country. To come to the

point, they don't make them any better than Jim Browning, and Senator Lee Metcalf and I knew that when we recommended his appointment. He has lived up to and exceeded our expectations and we are delighted to join in the celebration.

MR. RUBIN: So, Judge Browning, our efforts will continue. Just as you always told us that no opinion is done until it really is done, your clerks pledge to you that we will keep working with Congress and everyone out there to make sure that this building is named the James R. Browning United States Courthouse. Senator Mansfield got it right, they don't make them any better than you. From your clerks, and from I'm sure everyone gathered here, we thank you for everything you've done for us and for the cause of justice over the years.

CHIEF JUSTICE SCHROEDER: Thank you, Michael, for your efforts to create a lasting memorial to Jim Browning.

And now it is time that we hear from the honoree of the day. And so with no further ado, I present the Honorable James R. Browning.

JUDGE BROWNING:

How do you respond to that? Well, my first response is to thank those who thought of having this ceremony and who gave their time and energy so prodigiously to make it happen. Frankly, at the outset, I was not really enthusiastic about that, but I must now confess that listening to a stream of flattering remarks is something one can easily learn to tolerate, even to enjoy. And I did enjoy it!

A group of very fine people have just spent over an hour in thanking me, in essence, for devoting forty years of my life to service on this Court. But serving as a judge on this Court is not something for which a lawyer should be thanked. On the contrary, it is a privilege, a deeply satisfying way for a lawyer to spend a life in the law. In no other activity can a lawyer participate so directly and significantly in maintaining and hopefully improving a system of rules that make organized society possible and provide the means for peacefully resolving many of our most difficult problems.

I have never doubted that over these years. I have always know that, as a judge on this Court, I was among the few who had been given a maximum opportunity to solve problems and make life more worthwhile in this society in which we live. I thank you and all the powers that be for giving me that privilege.

I cannot close without recognizing the context in which this ceremony is held. As our Chief Judge has noted, we meet at a

time of tragedy. Thirty years ago, Roger J. Traynor, Chief Justice of California and father of one of our speakers today, described the courthouse as,

Every man's castle. His fortress against tyrants of powerful government or of powerful private groups, and against mobs and brutes and scoundrels. Gold is where you find it and the stake in it is yours; but justice you find and share with others in every man's castle, the courthouse.

Earlier this week, Chief Justice Ronald George of California stated that over the next several days we will be challenged to respond not blindly, but justly, and to hold close the rule of law of which the strength and power of our nation and our state derives. Our own Chief Judge Schroeder has called upon all of us to give each other strength and to reflect on how precious our freedoms are and how important the courts are to their preservation. It will be the duty and the privilege of the judges in this and other courthouses across our nation to give meaning to those words.

Thank you very much.

CHIEF JUDGE SCHROEDER: Thank you, Jim. You could not have given us more fitting words, and we thank you for being you and for being our friend. I now declare that the proceedings in this Court session are adjourned.